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09/941,251	08/28/2001	Dwip N. Banerjee	AUS920010507US1	5907
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DUKE W. YEE CARSTENS, YEE & CAHOON, L.L.P. P.O. BOX 802334 DALLAS, TX 75380			HARRIS, CHANDA L	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/941,251

Applicant(s)

BANERJEE ET AL.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Status of Claims*

In response to the Amendment filed on 3/29/04, Claims 1-50 are pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 6-10, 12-18, 29-33, 35-41 and 46, are rejected under 35 U.S.C. 102(e) as being anticipated by Greene et al. (US 2002/0172931).**

1. [Claims 6,29, 46]: Regarding Claims 6,29, and 46, Greene discloses administering a test to a remotely located user of a client device; receiving test question timing data (e.g. time stamp information for answer input) from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer the test question; and outputting the test question timing data to a proctor device (i.e. proctor workstation) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. See p.4, [0041] and [0043]. Greene discloses a controller; and at least one interface coupled to the controller,

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wherein the controller administers a test to a remotely located user of a client device via the at least one interface. See Claim 21. Greene discloses a computer program product. See Claim 41.

In response to Applicant's arguments, Examiner maintains that Greene discloses receiving test question timing data from the client device, the test question data representing an elapsed time used by the remotely located user in attempting to answer a test question (i.e., currently elapsed time of the test session). See p.4, [0041]. A test session in Greene is capable of comprising a test question. There can be one test question in Greene that makes up an entire test session. Therefore, Examiner also maintains that Greene discloses outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time used in attempting to answer the test question for the remotely located user.

2. [Claim 7]: Regarding Claim 7, Greene discloses billing a test developer for administration of the test to the remotely located user. See Claim 2.
3. [Claim 8]: Regarding Claim 8, Greene discloses billing the remotely located user for administration of the test. See Claim 3.
4. [Claim 9]: Regarding Claim 9, Greene discloses sending an instant message to the client device. See Claim 6.
5. [Claim 10]: Regarding Claim 10, Greene discloses receiving an instant message from the client device. See Claim 7.
6. [Claim 12]: Regarding Claim 12, Greene discloses storing a score for the test in a permanent storage. See p.4, [0040].

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7. [Claim 13]: Regarding Claim 13, Greene discloses wherein the test is developed by a test developer and wherein the method is implemented by a test administration system that is operated by a different entity from the test developer. See Claim 10.
8. [Claim 14]: Regarding Claim 14, Greene discloses receiving a request for administration of the test to the remotely located user; establishing a session identification for the administration of the test to the remotely located user; and correlating the test question timing data to the administration of the test to the remotely located user based on the session identification. See Claim 11.
9. [Claim 15]: Regarding Claim 15, Greene discloses wherein the session identification includes a proctor device identifier, and wherein outputting the test question timing data to the proctor device is based on the proctor device identifier. See Claim 12.
10. [Claim 16]: Regarding Claim 16, Greene discloses storing an indicator of a number of test takers for the test; and billing a test developer of the test based on the number of test takers for the test. See Claim 13.
11. [Claims 17,40]: Regarding Claims 17 and 40, Greene discloses monitoring (comparing) the test question timing data for evidence of greater than expected response time to the test question, wherein outputting the test question timing data to a proctor device (i.e. session timing device) is performed in response to determining that evidence of greater than expected response time to the test question is present (inherent). See p.4, [0041].

In response to Applicant's arguments, Examiner maintains that Greene

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discloses the aforementioned limitations of Claims 17 and 40 on the basis that a test session in Greene is capable of comprising a test question. There can be one test question in Greene that makes up an entire test session.

12. [Claims 18,41]: Regarding Claims 18 and 41, Greene discloses wherein monitoring the test question timing data for evidence of greater than expected response time to the test question includes comparing previously received test question timing data (i.e. total time length of the administered test) to currently received test question timing data (i.e. currently elapsed time) to determine if a change in the test question timing data indicates evidence of greater than expected response time to the test question (inherent). See p.4, [0041].

13. [Claim 30]: Regarding Claim 30, Greene discloses wherein the controller bills a test developer for administration of the test to the remotely located user. See Claim 22.

14. [Claim 31]: Regarding Claim 31, Greene discloses wherein the controller bills the remotely located user for administration of the test. See Claim 23.

15. [Claim 32]: Regarding Claim 32, Greene discloses wherein the controller sends an instant message to the client device via the at least one interface. See Claim 26.

16. [Claim 33]: Regarding Claim 33, Greene discloses wherein the controller receives an instant message from the client device via the at least one interface. See Claim 27.

17. [Claim 35]: Regarding Claim 35, Greene discloses wherein the controller stores a score for the test in the storage device. See Claim 29.

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18. [Claim 36]: Regarding Claim 30, Greene discloses wherein the test is developed by a test developer and wherein the apparatus is operated by a different entity from the test developer. See Claim 30.

19. [Claim 37]: Regarding Claim 37, Greene discloses wherein the controller receives a request for administration of the test to the remotely located user, establishes a session identification (i.e. session id) for the administration of the test to the remotely located user, and correlates the test question timing data to the administration of the test to the remotely located user based on the session identification. See p.3, [0037] and p.4, [0041].

20. [Claim 38]: Regarding Claim 38, Greene discloses wherein the session identification includes a proctor device identifier and wherein the controller outputs the test question timing data to the proctor device based on the proctor device identifier (i.e. indicator of the proctor workstation assigned to monitor the session). See p.3, [0038] and p.4, [0041].

21. [Claim 39]: Regarding Claim 39, Greene discloses a storage device, wherein the controller stores an indicator of a number of test takers for the test in the storage device and bills a test developer based on the number of test takers for the test. See Claim 33.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3,23-25,28,34, and 47-48 are under 35 U.S.C. 103(a) as being unpatentable over Remschel in view of Turner et al. (US 6,633,742).**

1. [Claims 1,23,28,34,47]: Regarding Claims 1,23, 28, 34, and 47, Remschel discloses identifying presentation of test questions on the data processing system. See Col.2: 17-22. Remschel discloses monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test question has been presented (i.e. the elapsed time since the start of the current question). See Col.2: 33-39 and Col.12: 55-63. Remschel discloses a bus system (i.e. connecting cable) and a communications unit connected to the bus system (i.e. communication router). See FIG. 1. Memory including a set of instructions would have been an inherent feature of Remschel's invention. Remschel's invention is capable of representing wherein the elapsed time is an amount of time in attempting to answer a test question. Remschel discloses representing an elapsed time since the start of a current question and the number of students who have responded to the current question. From this information, the amount of time in attempting to answer a question is capable of being determined.

Remschel does not disclose expressly generating an alert (i.e. notifying the user) after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question. However, Turner teaches the concept of generating an alert after timing data



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exceeds a threshold, wherein the alert apprises (i.e., notifies) a test taker that the elapsed time is excessive in Col.21: 8-12. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel generating an alert after the test question timing data exceeds a threshold, in light of the teaching of Turner, in order to inform that a task that needs to be performed.

In response to Applicant's arguments, it is Examiner's position, that given its broadest reasonable interpretation, a question is an expression of inquiry that invites or calls for a reply. A task in Turner is an expression of inquiry that invites or calls for a reply. Therefore, it would be reasonable to conclude that a question in the claimed invention corresponds to a task in Turner.

Applicant's arguments regarding the combination of Remschel and Turner have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Remschel with Turner is found in Col.21: 10-18, to inform that a tasks needs to be performed.

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In response to Applicant's arguments, Examiner maintains that there is suggestion to combine Remschel and Turner.

2. [Claims 2,24,48]: Regarding Claims 2,24, and 48, Remschel discloses wherein the monitoring step is performed by a proctor device or a program on the data processing system (i.e. companion software). See Col.8: 58-61.

3. [Claims 3,25]: Regarding Claims 3 and 25, Remschel does not disclose expressly wherein the program is an applet. However, Turner teaches in Col.17: 35-38. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate an applet into the method and system of Remschel, in light of the teaching of Turner, in order to display a graphic user interface.

**Claims 4-5,26-27, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remschel/Turner as applied to claims 1,23, and 47 above, and further in view of Walker (US 6,093,026).**

1. [Claims 4,26,49]: Regarding Claims 4,26, and 49, Remschel/Turner does not disclose expressly billing a client for monitoring the presentation of test questions (i.e. billing information). However, Walker teaches the concept of billing for a providing a service in Col.4: 33-40. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Remschel/Turner billing a client for monitoring the presentation of test questions, in light of the teaching of Walker, in order to charge the client for tests conducted on its behalf.

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2. [Claims 5,27,50]: Regarding Claims 5, 27, and 50, Remschel/Turner does not disclose expressly storing an identification of a number of test takers for the test; and billing a client based on the number of test takers for the test. However, Walker teaches billing a client for surveys conducted on its behalf in Col.4: 33-39. It is obvious that the charge to the client would have been somehow determined by the quantity of surveys administered. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill to incorporate the aforementioned limitation into the method and system of Remschel/Turner, in light of the teaching of Walker, in order to specify how the client is to be charged for tests conducted on its behalf.

**Claim 6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over New, III (US 6,155,834) in view of Hoehn-Saric et al. (US 5,915,973).**

[Claims 6, 29]: Regarding Claims 6 and 29, New discloses receiving question timing data from a client device, the test question timing data representing an elapsed time used by the user in attempting to answer a test question (i.e., elapsing when a target word is said and/or shown), and outputting the test question timing data to a proctor device (i.e., response timer) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. See Col.13: 46-54. New discloses a controller (i.e., computer). See Col.6: 46-48.

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New does not disclose expressly a remotely located user. However, Hoehn-Saric teaches administering tests to remotely located users and retrieving testing data from the remotely located users in the Abstract. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate administering tests to remotely located users and retrieving testing data from the remotely located users into the method and system of New, in light of the teaching of Hoehn-Saric, in order to automate the process of test delivery and eliminate the need for support personnel at a test site.

**Claims 11 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over New/Hoehn-Saric as applied to claims 6 and 29 above, and further in view of Turner et al. (U.S. 6,633,742).**

[Claims 11,34]: Regarding Claims 11 and 34, New/Hoehn-Saric does not disclose expressly alerting the remotely located user when the test question timing data exceeds a predetermined threshold. However, Turner teaches generating an alert after timing data exceeds a threshold in Col.21: 8-12.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of New/Hoehn-Saric generating an alert after the test question timing data exceeds a threshold, in light of the teaching of Turner, in order to inform that task that needs to be performed.

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**Claims 19-20 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over New/Hoehn-Saric as applied to claims 6 and 29 above, and further in view of Turner et al. (U.S. 6,633,742).**

[Claims 19-20,42-43]: Regarding Claims 19-20 and 42-43, New/Hoehn-Saric does not disclose expressly generating an alert profile for the remotely located user for a particular test based on a data profile associated with the remotely located user and transmitting an alert (e.g. personalized advertising) to the remotely located user based on the generated alert profile. However, Agmoni teaches such the Abstract and on p.4, [0063]. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitations into the method and system of New/Hoehn-Saric, in light if the teaching of Agmoni, in order to provide personalized messaging.

**Claims 21 and 44 rejected under 35 U.S.C. 103(a) as being unpatentable over New/Hoehn-Saric/Turner as applied to Claims 19 and 42 above, and further in view of Dattatri (US 2002/0049815).**

[Claims 21,44]: Regarding Claims 21 and 44, New/Hoehn-Saric/Turner does not disclose expressly storing a response from the remotely located user to update the alert profile for use in future tests. However, Dattatri teaches such on p.11, [0103]-[0104]. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of New/Hoehn-saric/Turner, in light of the teaching of

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Dattatri, in order to reflect changes to the alert profile. The intended use "for use in future tests" does not further limit the invention as claimed.

**Claims 22 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over New/Hoehn-Saric as applied to Claims 6 and 29 above, and further in view of Dattatri (US 2002/0049815).**

[Claims 22,45]: Regarding Claims 22 and 45, New/Hoehn-Saric does not disclose expressly storing of the timing data for the test question to update timing data for the remotely located user. However, Thomas teaches such in Table 1 (Col.6). The intended use "for use in future tests" does not further limit the invention as claimed. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of New/Hoehn-Saric, in light of the teaching of Thomas, in order to help user monitor his/her performance.

### ***Response to Arguments***

Applicant's arguments have been considered and addressed above. This action is NON-FINAL in view of new grounds of rejection. See rejection above.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Chanda L. Harris  
Examiner  
Art Unit 3714

ch.